

**WILLIAMSBURG
BOARD OF ZONING APPEALS
MINUTES**

September 6, 2005

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, September 6, 2005 at 4:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

ATTENDANCE

Present were Board members Knudson, Kafes, Carr, Lamson and White. Staff members present were Zoning Administrator Murphy, Assistant City Attorney Workman and Secretary Scott.

CALL TO ORDER and MINUTES

Chairman Knudson called the meeting to order. Mr. Carr moved that the minutes of the August 2, 2005 meeting be approved. Mr. Lamson seconded the motion which carried by roll call vote of 5-0.

Recorded vote on the motion:

Aye: Lamson, Carr, Knudson, Kafes, White
No: None
Absent: None

PUBLIC HEARINGS

BZA #05-015: Request of Lone-G Inc. to appeal the decision of the Zoning Administrator contained in a letter dated April 26, 2005 determining that 101 Chandler Court is a single-family dwelling. The property is identified on Williamsburg Tax Map Number 495-0A-00-016, and is zoned Single Family Dwelling District RS-2. Upheld the Zoning Administrator's decision.

Chairman Knudson introduced the appeal and noted the following Board members have visited the site, both indoors and out:

Knudson, Kafes, Carr, Lamson and White

The minutes continue as set forth in the attached transcript.

RESOLUTION

WHEREAS, Lone G, Inc. (the "Appellant") has submitted application **BZA #05-015** appealing the Zoning Administrator's decision contained in a letter dated April 26, 2005 that the improvements erected on 101 Chandler Court may be occupied only as a single-family dwelling; and

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WHEREAS, the Appellant claims a valid nonconforming use status for the subject property that allows it to be legally occupied as three single-family dwelling units; and

WHEREAS, the property is located at 101 Chandler Court, Williamsburg Tax Map Number **495-(0A)-00-016** and is zoned **RS-2, Single Family Dwelling District**; and

WHEREAS, after giving notice as required by Section 15.2-2312 of the Code of Virginia (1950), as amended, the City of Williamsburg Board of Zoning Appeals proceeded to hear the appeal on September 6, 2005, at which hearing all interested persons in attendance were allowed to speak; and

NOW, THEREFORE, after careful consideration of all documentation before them; the presentations by the Appellant and its attorney; presentations by the zoning administrator and the assistant city attorney and statements received from various interested persons at the public hearing; and further after hearing arguments of the attorneys for the Appellant and the city, the Board finds:

1. That as of 1966 and at all times thereafter, the zoning laws of the City of Williamsburg limited the use and occupancy of the subject property to single-family dwelling purposes.
2. That while prior to 1966, the zoning laws of the City of Williamsburg did allow two-family dwelling usage of the property, there is no evidence that such property was used for anything other than a single-family dwelling and that in 1966 when the property was rezoned to limit its use to single-family dwelling purposes, the property was being used and occupied as a single-family dwelling.
3. That the City's Permit records from 1950 to present do not indicate any legal change in use of the property from a single-family dwelling.
4. That Copies of leases provided by the Appellant fail to establish that the property was ever legally used and occupied as a two-family dwelling while the City's zoning ordinance allowed such use.
5. That the Appellant bears the burden of proof to establish the valid nonconforming use status of the property.
6. That the Appellant has failed to show by a preponderance of evidence that the property enjoys a legal nonconforming use status that would allow its use and occupancy for any purpose other than uses allowed in the City's RS-2 Single-Family Dwelling District, which uses do not include multi-family dwellings.

NOW, THEREFORE, BE IT RESOLVED by the City of Williamsburg Board of Zoning Appeals on this the 6th day of September 2005 that the request of Lone G, Inc. to reverse the decision of the Zoning Administrator as contained in the letter of April 26, 2005 **is hereby denied**. The Board further finds that the Zoning Administrator's decision contained in the April 26, 2005 letter is correct and upholds such decision.

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Recorded vote on the motion:

Aye: Knudson, Kafes, Carr, Lamson, White

No: None

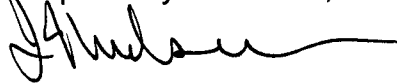
Absent: None

OLD BUSINESS – None

NEW BUSINESS – None

There being no further business the meeting adjourned at 5:45 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Knudson', with a long horizontal flourish extending to the right.

Judith Knudson, Chairman
Board of Zoning Appeals

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4 WILLIAMSBURG BOARD OF
5 ZONING APPEALS
6

7
8 September 6, 2005
9 4:00 p.m.

10 Second Floor
11 401 Lafayette Street
12 Williamsburg, Virginia 23185
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16

17 BOARD MEMBERS: Judy Knudson, Chairman
18 William H. Carr
19 Elizabeth White
20 David R. Lamson
21 William O. Kafes

22 ALSO PRESENT: Christina Workman, Counsel
23 Dee Scott, Secretary
24 Carolyn Murphy, Zoning Administrator
25

Reported and transcribed by:
Brenda Lewis Caputo, CCR

COPY

LEWIS & DeBERRY
Reporting Service

(Recording of the proceedings began as follows:)

MS. KNUDSON: So please address only this matter. Mr. Tarley?

MR. TARLEY: Good afternoon, Madam Chair. My name's John Tarley, and I'm a resident of the city. And I'm representing Lone-G, Incorporated. With me somewhere in the mass of people back there is Greg Granger who's a principal in Lone-G.

We're here on appeal of the zoning administrator's decision as set forth in the letter in which she indicated the property at 101 Chandler Court does not have nonconforming rights to any additional units beyond a single-family dwelling.

Today we will show that the property located at 101 Chandler Court has established a lawful nonconforming use as set forth in the 1966 city of Williamsburg ordinance, has maintained that lawful nonconforming use since then without any interruption of 24 consecutive months.

In summary, we'll show that Section 26-9 of the '66 ordinance sets forth the principal use for this dwelling as a single-family dwelling, and as an accessory

1 use, the property may be used for renting of rooms to
2 residence boarders. We will show that since at least 1979,
3 the property has been used principally as a one-family
4 dwelling as defined in the ordinance with a lawful accessory
5 use of the renting of rooms for residence boarders.

6 Upon the purchase of Mr. Granger's
7 property as you've seen as you walk through, the property's
8 experienced an exciting rejuvenation. I walk, and when I'm
9 really motivated jog, past that house several times in the
10 course of a month and anybody can see the remarkable
11 makeover of the house as you can see both internally and
12 externally. I have some photos here that I'll just pass
13 around. It shows the extent of some of the work that's been
14 done on the home. You can compare it with what you saw
15 today.

16 Furthermore, there was some discussion at
17 our last -- prior to the public hearing being continued
18 about some concerns over certain things with student
19 rentals, and I have an e-mail here I would share, and I
20 couldn't put it in my packet because I just received it as
21 well, that references the only calls coming to the city of
22 Williamsburg police since May of 2004 was a stolen bike
23 report and a burglar alarm in that year and several months
24 since then.

25 Mr. Granger's received many positive

1 comments about the transformation of the house there. I
2 think he's made a strong rejuvenation of that property, and
3 I think he should be commended for his contribution to the
4 area. Notwithstanding that, clearly that's not the issue
5 before us today. But some history is in order for this
6 property and for this neighborhood.

7 Rentals and boarders in the Chandler
8 Court/Pollard Park area are nothing new. Behind Tab No. 1,
9 I provided you an excerpt from the application to put the
10 Pollard Park/Chandler Court on the national register of
11 historic places that Mr. Smith had put together for the
12 neighborhood. And as set forth on this Tab 1 and in that
13 particular application, the people living in the district
14 were not always homeowners. 706 Pollard Park included
15 roomers on the upper floor; 134 Chandler Court was a
16 sorority, and I think there were a couple other properties
17 that were sororities within that. One Ballard Lane was
18 rented to faculty. 207 Griffin Avenue, 131, 134 and 140
19 Chandler Court included apartments rented to William and
20 Mary students.

21 Clearly, this isn't an area that has been
22 immune to William and Mary students and faculty. And as the
23 Board is aware, properties in the Chandler Court/Pollard
24 area to this day maintain rentals. And not that that is
25 entirely relevant to the issue before us; however, it is

1 accurate to assert that rentals to students and faculty in
2 that area are as much a part of the history of Chandler
3 Court as any other use.

4 With respect to the legal issue, the
5 property has established a nonconforming use. As Ms. Murphy
6 set forth in her letter, the property was zoned Residence B
7 prior to the change to its current zoning designation in
8 1991.

9 26-9(1)(a) which I believe is in the
10 packet that was provided to you by the zoning administrator
11 sets forth the principal use as a one-family dwelling.
12 26-9(2)(c) permits as an accessory use a building to be used
13 for the renting of rooms to residence boarders.

14 Since at least 1979 when David Andrews
15 moved there, the property has been used principally as a
16 one-family dwelling as defined in the ordinance in place at
17 the time with an accessory use as a renting of the rooms to
18 boarders. Until 2004, Mr. Andrews resided in one area of
19 the house and rented the remainder of the house to the
20 boarders as permitted by the ordinance.

21 Tab 2 has an affidavit from Mr. Andrews in
22 which he sets forth more particulars of the summary I just
23 provided of the 25 years that he lived there. Tabs 3
24 through 8 set forth a representative sample of the written
25 leases of the property in which Mr. Andrews rented rooms to

1 boarders.

2 I've separated each tab. The property
3 changed hands several times between Mr. Andrews and a couple
4 other individuals. A company in which Mr. Andrews was a
5 principal owned the property for a while, was transferred
6 back to Mr. Andrews, and each of those tabs separates that
7 particular period of time.

8 I recognize that many of the citizens that
9 are present here today will speak against this appeal,
10 principally that the stated use by the property owner is
11 inconsistent with the neighborhood and inconsistent with the
12 current use of the neighborhood. And although as I
13 indicated earlier I believe that's a debatable presumption
14 based upon the long time use and the current use of those
15 rentals, I submit to you it's relevant, because this appeal
16 simply asks the Board to determine that a lawful
17 nonconforming use has been established for the property to
18 rent rooms to boarders under the conditions set forth in the
19 '66 zoning ordinance and then to determine that this
20 nonconforming use has continued without interruption for any
21 24 consecutive month period.

22 The information provided in the packet in
23 this presentation demonstrates that the prior owner, David
24 Andrews, and various other entities in which he was a member
25 established a lawful accessory use, the principal use being

1 as a family dwelling defined in that Section 26 of the city
2 ordinance, established a lawful accessory use of renting
3 rooms to residence boarders, that the subsequent zoning
4 changes made this legal use nonconforming, and that the
5 nonconforming use has continued to the present without any
6 interruption of 24 consecutive months.

7 As you could see when we were there, the
8 property has clearly maintained separate entrances, separate
9 meters by Virginia Power, separate service by the postal
10 service. For 25 years running, the property has been used
11 principally as a single-family dwelling with an accessory
12 use.

13 The zoning ordinance changed in 1991 as
14 set forth by Ms. Murphy, and it made this use lawfully
15 nonconforming. That lawful nonconforming use has continued
16 without interruption. Based upon that, I would respectfully
17 request that the Board reverse the decision of the zoning
18 administrator, find that the property does have a lawful
19 nonconforming use as set forth in the '66 ordinance, 26-9,
20 and that the lawful nonconforming use has continued
21 uninterrupted and in nonconformance to the current ordinance
22 for any 24 consecutive month period.

23 I wanted to answer any questions that you
24 may have.

25 MS. KNUDSON: Thank you. Are there any

1 questions from the Board? Ms. White?

2 MS. WHITE: I have a couple of questions
3 and other Board members may as well.

4 Mr. Tarley, you've presented us with an
5 awful lot of information. Most of what I have been able to
6 see just thumbing through this fairly quickly takes -- if
7 you were to take the affidavit that you have of Mr. Andrews
8 behind Tab No. 2, this takes us back to 1982.

9 MR. TARLEY: Correct.

10 MS. WHITE: Now, is it your position by
11 not supplying any information prior to 1982 that what
12 happened between 1966 and '82, is it relevant?

13 MR. TARLEY: I don't have it. That's all
14 it simply means. And I would submit that it wouldn't be
15 relevant because the ordinance in 1982 was what it was in
16 1966. It wasn't until subsequent to that that the zoning
17 ordinance changed to make it a nonconforming use.

18 MS. WHITE: And it is your position since
19 you don't have it -- and, forgive me, I wasn't at the last
20 hearing so I'm playing catch-up a little bit.

21 MR. TARLEY: We didn't do anything at the
22 last hearing.

23 MS. WHITE: I'm going by what the minutes
24 say. The minutes from our last hearing indicate that you
25 acknowledge that the Applicant would have the burden of

1 proof of showing uninterrupted consecutive use going all the
2 way back to 1966.

3 MR. CARR: The minutes I have say 1947.

4 MR. TARLEY: Well, in 1947, the ordinance
5 was using it as a one- or a two-family dwelling. That
6 changed in 1966 to where it was just a one-family dwelling.
7 I submit that upon further review, I don't think it's our
8 burden to show that it goes all the way back to 1966 so long
9 as it was a lawful use which it would have been in 1982
10 because you were still under the 1966 ordinance. It doesn't
11 mean -- there are many uses that you can have of the
12 property. You don't have to use them all. But once you use
13 them and it's a lawful use and then it becomes
14 nonconforming, it has to continue uninterrupted.

15 MS. WHITE: So by taking the position it
16 was a lawful use in 1982, that it must have been a lawful
17 use in 1970, that's based on the assumption that the city
18 was aware of what was going on and didn't take any action?

19 MR. TARLEY: I'm saying whatever happened
20 in 1970 would be irrelevant if it was a lawful use in 1982.
21 I don't have to go back to '66. Just because it's an
22 accessory use doesn't mean I have to use it that way.

23 MS. WHITE: Well, help me understand
24 because you're relying on the fact that this is a
25 nonconforming use, and when the ordinance changed in 1991,

1 you're maintaining it was a lawful use. But in order to
2 prove that it was a lawful use at that point in time, don't
3 you have to prove that it actually complied with the 1966
4 ordinance and the definition of nonconforming use which
5 would mean the uninterrupted, no period for more than 24
6 months of uninterrupted use?

7 **MR. TARLEY:** Not from 1966 to 1991 or
8 whenever the ordinance changed. You only have to prove the
9 nonconforming consecutive period once it becomes
10 nonconforming. I'm saying it was conforming in '82. When
11 the ordinance changed, it was improper. You couldn't use it
12 that way unless you had already established a use that was
13 permitted under the prior ordinance.

14 It's sort of like a taking. The use that
15 I had was proper. You've changed the ordinance making it
16 improper. So long as I maintain -- then it becomes a lawful
17 nonconforming use. From that point forward, I have to
18 continue that nonconforming use without any 24-month
19 interruption. I don't need to go back. I only have to be
20 sure -- and what I'm saying, what I'm submitting to you with
21 the leases and my presentation is that the proper use in
22 1982 was a single-family dwelling. Accessory use could be
23 rented to roomers and boarders as set forth in the
24 ordinance. And that's what the leases set forth, that it
25 was used principally as a single-family dwelling as single

1 family is defined in that '66 ordinance and that it was
2 rented to roomers. It then became nonconforming when the
3 ordinance changed, and now we have to prove that there was
4 no interruption.

5 MS. WHITE: I understand your point now
6 and at least your position. Can you tell me if out of the
7 leases that you've submitted, are there new leases that
8 weren't submitted in preparation for the last hearing?

9 MR. TARLEY: Well, there were no leases
10 provided at the last hearing. I guess maybe what you
11 would -- there was a note I think in Ms. Murphy's letter
12 that there were leases that were not provided at the time
13 she was reviewing, and I think it was from 1993 to 2003. I
14 have her letter here, but I believe that's what it was.

15 So there are leases in your packet from
16 1997, '98, '99, 2000 and 2001. The other leases as set
17 forth in the affidavit, and that would be Tab 6 and Tab 7,
18 the leases that are not there are not available for a
19 variety of reasons as set forth in Mr. Andrews' affidavit.
20 Furthermore, his practice was if the person stayed in the
21 property at the end of the conclusion of the lease, they
22 continued on a month-to-month basis and they did not enter
23 into a separate written lease agreement.

24 MS. WHITE: Now, was this true for all
25 three units? When I looked at the leases that were provided

1 in the package for the August meeting, I could not -- in
2 making lists of occupancy based on the terms, there were
3 lots of gaps. Now, when you look at these three units
4 individually, can you say that for each one of the three
5 units that they had uninterrupted use for each of those
6 units, or are you just lumping them all together?

7 MR. TARLEY: Lumping them all together
8 because they weren't -- Mr. Andrews, if you looked at the
9 lease, has moved from one part of the dwelling to another
10 part of the dwelling, leased one of the other areas, one of
11 the other rooms or several of the other rooms. But during
12 the entire period of time, all of the rooms were occupied
13 either by the family living there, Mr. Andrews, or by
14 boarders, roomers.

15 MS. WHITE: If they were occupied by the
16 family, then that would have put him in compliance just with
17 the 1991 ordinance changes, correct?

18 MR. TARLEY: It would depend upon to whom
19 he rented. I'm saying Mr. Andrews was -- under the
20 ordinance, the family provided for under the '66 ordinance,
21 not that he was renting to family.

22 MS. WHITE: Under today, bringing you up
23 to today, is there a family occupying this? I assume your
24 position is that Units A and B are accessory uses. Am I
25 understanding that correctly?

1 **MR. TARLEY:** Correct. And what it would
2 be is that under the '66 ordinance and probably why the
3 ordinance was subsequently changed, family was more broadly
4 interpreted and it actually was a broader ordinance. And it
5 was one or more persons occupying the premises and living as
6 a single housekeeping unit as distinguished from a group
7 occupying the boarding house. The leases are with all three
8 people as a unit, not individuals.

9 **MS. WHITE:** Now, when I walked through
10 there today, my impression was that it was a boarding house.
11 I did not see anything in any shape or form that resembled a
12 family occupying the main house or the accessory houses.
13 Are you saying that that's no longer needed?

14 **MR. TARLEY:** I submit that in the '66
15 ordinance, family wasn't the traditional nuclear family.
16 It's defined only as one or more persons living together as
17 a housekeeping unit. And I think subsequently, the
18 ordinance was modified to make it more specific about what a
19 family is, related by blood. That was not in the '66
20 ordinance. And so I would submit that, yes -- and the term
21 boarding house is defined in the '66 ordinance. I would
22 submit that we're not part of that definition of what's
23 existing there now.

24 **MS. WHITE:** That's all I have.

25 **MS. KNUDSON:** Any other questions?

1 **MR. KAFES:** The photographs that you
2 passed out showing the condition of the property, apparently
3 looking at those photographs, the property was uninhabitable
4 or largely incapable of being used. For how long was the
5 building in that condition, and if it was more than two
6 years, it would break any period of -- or the allowance for
7 a nonconforming use.

8 **MR. TARLEY:** Are you asking a question?

9 **MR. KAFES:** Yeah. I guess my question is
10 was the building uninhabitable as may have been indicated by
11 these photographs, and if so, for what period? You may not
12 know the answer to that.

13 **MR. TARLEY:** All I would have is the
14 affidavit that Mr. Andrews provided. And I would submit to
15 you that the photographs are in various stages of repair of
16 the dwelling which showed some of the things that were
17 uncovered when walls were removed.

18 **MS. KNUDSON:** Mr. Carr?

19 **MR. CARR:** In our package for the
20 August 2nd meeting, we had an affidavit from Mr. Andrews
21 stating that he first purchased the property known as 101
22 Chandler Court in 1984. From that time until 2004, the
23 property was either owned or controlled by myself or a
24 family member or a company controlled by myself or a family
25 member. Somewhere I read in the package that I thought

1 Mr. Granger purchased the property in October of '02.

2 MR. TARLEY: No. Mr. Granger had written
3 a letter I believe to Ms. Murphy inquiring about the use of
4 that property in October of '02. The actual deed --

5 MR. CARR: When did Mr. Granger purchase
6 it?

7 MR. TARLEY: February of 2004.

8 MR. CARR: Thank you.

9 MS. KNUDSON: Any other questions for
10 Mr. Tarley?

11 MR. LAMSON: I have a quick question for
12 Mr. Tarley. On the building permits that were applied for
13 by Mr. Granger, do you have the dates of when those were
14 applied for?

15 MR. TARLEY: I do not.

16 MR. LAMSON: And what that paid for?

17 MR. TARLEY: I do not. If I could ask
18 Mr. Granger?

19 MR. GRANGER: I think I have them with me
20 but I'm not positive. I will be happy to look.

21 MR. LAMSON: My generic question is were
22 three building permits applied for and three building
23 permits approved?

24 MR. TARLEY: I don't know the answer. I'm
25 going to wait for him.

1 MR. GRANGER: I do not have those with me.

2 MR. LAMSON: Mr. Granger, did you apply

3 for three building permits that were approved?

4 MR. GRANGER: I applied for a number of

5 different building permits for the various trades. When we

6 installed -- when we replaced the meters, we had building

7 permits to upgrade the electrical service so that each unit

8 had its own 200 amp meter base and there are four heating

9 and cooling systems. We pulled all the necessary permits,

10 the subcontractors did and such. I'm not sure exactly how

11 many were pulled, but I am confident that all the necessary

12 permits were pulled.

13 MR. LAMSON: And my last question, were

14 the majority of those permits pulled simultaneously or

15 individually?

16 MR. GRANGER: Individually.

17 MS. MURPHY: I have the permits, copies of

18 them. I have 101 Chandler Court, Building Permit 9402 which

19 was issued to Gary Wallace for repairing moisture damaged

20 bathrooms for 101 Chandler Court. I've got an electrical

21 permit for 101-A Chandler Court, increase service to 300

22 amps and install circuits. I've got 101 Chandler Court,

23 increase service to 300 amps. You've asked for dates also,

24 didn't you? The building permit was June the 16th, 2004;

25 the electrical permit was June the 15th, it looks like,

1 2004.

2 MS. KNUDSON: Are they all for different
3 residences?

4 MS. MURPHY: There's an A and a B and a C
5 on them. 101 Chandler Court, increase service to 200 amps
6 with circuits, 6-17-2004; plumbing permit for 101 Chandler
7 Court, replace 16 fixtures and three water heaters;
8 mechanical permit for 101 Chandler Court, install four heat
9 pumps and that was issued June 23rd. So that's what I have.

10 MS. KNUDSON: Thank you. Is there any
11 other questions from the Board?

12 MS. WHITE: I'm going back to Mr. Andrews'
13 affidavit that was submitted in connection with the August
14 hearing, and he states that around 1992, there was a fire
15 that destroyed some records, rental records stored different
16 than had been supplied to Greg Granger. So this goes back
17 to the question of the fire and how long that particular
18 unit was out of use or units. You don't know the answer to
19 that?

20 MR. TARLEY: I have no answer other than
21 what I have in my packet which are the leases that are
22 through that period of time as well, '91 through '92, '92 to
23 '93. So I would submit that the documentary trail
24 establishes that there wasn't a two-year break, 24-month
25 break.

1 **MS. KNUDSON:** Any other questions?

2 **MR. KAFES:** Mr. Tarley, are you saying now
3 that the people that are inhabiting that building are
4 roomers and not families?

5 **MR. TARLEY:** The use of the property can
6 be as a single housekeeping unit -- and let's go back. The
7 nonconforming use has been -- this request came up when
8 Mr. Granger, Lone-G, purchased the property. At that time,
9 the property had been used as a principal residence renting
10 to roomers, nonconforming use, a lawful nonconforming use.

11 The property transferred hands February of
12 2004. Mr. Andrews continued to reside there until April of
13 2004 with the lease from Mr. Granger. Since then, it's been
14 three separate units, one in the principal area of the
15 residence living as a single housekeeping unit, and the
16 other rented out to the boarders. What I submit to you,
17 there are two decisions to make. Number one, that there was
18 a lawful nonconforming use established by Mr. Andrews and
19 all the entities that he controlled. Your second issue that
20 I think you're going to is is this -- let's assume you're
21 right: Mr. Tarley, is this a lawful nonconforming use.
22 That's a separate question. Because you can answer the
23 first one in the affirmative and the second one in the
24 negative, but still there's been -- what I'm submitting to
25 you is that there is a lawful nonconforming use that's been

1 established at that property for 25 years.

2 MR. CARR: The ordinance as I understand
3 it with respect to rental of rooms to roomers permits it
4 only in an owner-occupied dwelling. Now, this dwelling is
5 not owner occupied.

6 MR. TARLEY: The current ordinance does.
7 The 1966 ordinance did not require that, and that's why this
8 use would be conforming -- nonconforming, I'm sorry.

9 MS. WHITE: I actually have a question for
10 him if that's okay. I've done a comparison while I was
11 sitting here of the 1947 ordinance and the 1966 ordinance,
12 and there is substantial difference in the definition of the
13 accessory buildings or structures. And from 1947 to 1966,
14 the difference is that in the 1947 ordinance, this is
15 Section 23-10, subparagraph (2), Accessory uses and
16 buildings, subparagraph (d), "Accessory buildings or
17 structures located in the same lot with the residence such
18 as a private garage, quarters for servants housed on the
19 premises, noncommercial workshops, and living quarters for
20 nonresidential use." That is actually contemplated in 1947.
21 But when you get to the 1966 ordinance, they've taken that
22 out.

23 So my question to you is that if you're
24 going to rely completely on the 1966 ordinance, how do you
25 reconcile the fact that that was taken out?

1 **MR. TARLEY:** There is actually an
2 accessory buildings use in 26-9(a)(2)(D) on the '66
3 ordinance.

4 **MS. WHITE:** Correct. This is the one that
5 says accessory buildings or structures located on the same
6 lot with the residence such as a private garage, quarters
7 for servants housed on the premises and noncommercial
8 workshops.

9 **MR. TARLEY:** Right.

10 **MS. WHITE:** But it's taken out in the 1947
11 ordinance which said the accessory buildings or structures
12 to have living quarters for residential use.

13 **MR. TARLEY:** Well, number one, we don't
14 have an accessory building because this is all part of the
15 same structure. Number two, it's the use of the premises.
16 All I'm saying is if this was proper in the 1966 ordinance,
17 it doesn't matter what the 1947 ordinance says. If it's a
18 proper use in 1966, just like in 1991 -- or whatever use is
19 proper in 1991, it doesn't matter what the '66 ordinance
20 says. Just in the same fashion if this accessory use to the
21 principal use -- the accessory use can't be the principal
22 use. It's got to be accessory to the principal use. If
23 it's proper by that 1966 ordinance and made improper by a
24 subsequent ordinance provision, then it is a lawful
25 nonconforming use.

1 **MS. WHITE:** So you're relying on your --
2 and I'll need to get confirmation of this, if this is in
3 fact viewed as one building even though it's been permitted
4 as three different units by application. Now, I'm getting
5 confused a little bit in terms of what your position is.
6 Your position is that this is all one building not
7 withstanding the fact that you're leasing it out as three
8 separate units? And some of which -- I remember
9 Mr. Granger, when he took me through, one of the units you
10 couldn't actually access the main building from, you had to
11 walk outside and walk around. So you're --

12 **MR. TARLEY:** I'm just using the definition
13 of accessory building that's in the code which says any
14 building subordinate to the main building on a lot. And
15 there is only one building. The difference between rental
16 units and building I don't believe to be --

17 **MS. WHITE:** Where I'm going is are you
18 trying to -- when you look at the 1966 ordinance, are you
19 relying on subparagraph (c) and not subparagraph (d)?

20 **MR. TARLEY:** Yes, (c) is the ordinance I
21 was just reviewing. (d) permits the construction of
22 accessory buildings or structures, and (c) permits the
23 renting of rooms to residence boarders.

24 **MS. WHITE:** Okay. So your position is
25 it's (c) that controls here?

1 MR. TARLEY: Yes.

2 MS. WHITE: Carolyn, is it viewed as one
3 building?

4 MS. MURPHY: I think I would say it's one
5 building.

6 MS. WORKMAN: The application that was
7 made to the zoning administrator, the question was whether
8 or not the property could be divided into three separate
9 units. So the issue of whether this is a single-family
10 dwelling and how many people can live in a single-family
11 dwelling is not one as I understand it that the zoning
12 administrator has made a decision about.

13 The question was whether this house as a
14 legal nonconforming use could be divided into three separate
15 units. And based on the information that the zoning
16 administrator has, the answer is it is not a legal
17 nonconforming use as the city sees it.

18 So that's what the -- the question that
19 was in front of the zoning administrator, the question was
20 not if this is a single-family dwelling, are we
21 grandfathered for multiple people under the 1966 zoning
22 ordinance. That was not the question that Carolyn made a
23 decision about.

24 MS. WHITE: So looking at (c) which says,
25 "The renting of rooms and lodging and the serving of meals

1 for compensation to transient guests, residence boarders or
2 tourists by a member of the resident family or by an agent."
3 So the resident family in this particular case would be....

4 MR. TARLEY: In establishing the
5 nonconforming use, because again, that's first where we're
6 going.

7 MS. WHITE: Well, I'm looking at the
8 1966 --

9 MR. TARLEY: Oh, I know. I'm talking
10 about factually. The resident family to establish that
11 nonconforming use since the ordinance changed was David
12 Andrews. That's where you have to establish the
13 nonconforming use, that it was in place prior to the zoning
14 change. So that was David Andrews as the resident family.

15 MS. KNUDSON: Any other questions?

16 (No audible response.)

17 MS. KNUDSON: Thank you, Mr. Tarley.

18 MR. TARLEY: Thank you.

19 MS. KNUDSON: I'll now, as I said before,
20 call the names first of the people who submitted slips, and
21 then if anyone else would like to speak, that will be fine.
22 Please when you get to the podium state your name and your
23 address for the record.

24 The first slip I have is Ruth Kaiser.

25 MS. KAISER: I'm so honored to be first.

1 I'm not a very good public speaker. My name is Ruth Kaiser.
2 I live at 609 Richmond Road. That makes me one of the city
3 dinosaurs. I'm a homeowner. I live in my home. I think
4 there are fewer and fewer of us every year which is why I'm
5 here.

6 I missed the prior hearings on this issue,
7 but it seems to me very succinctly that the city needs to
8 make a precedent decision, and that is, rather than
9 permitting facade neighborhoods that look like single-family
10 dwellings like 101 Chandler Court, it's a lovely building
11 from the outside -- and the reason it appeals to us is
12 because it looks like a home. And the city owes those of us
13 who reside there and pay our taxes to give us what we
14 thought we already had and that was a small town with people
15 who live here and work here.

16 The precedent is either to stretch the
17 definition and thereby loosen parameters that are set in
18 various ordinances or to tighten them and actually honor the
19 spirit of the ordinances and the zoning. I don't want to
20 move from my house. I've been here almost 25 years. I want
21 to stay here.

22 And I'm not sure what we owe to a
23 population that is not -- I'm not sure what we owe to a
24 population that is not loyal to the city spirit. I feel
25 like I'm threatened, and I would like for the city and those

1 who represent me as a homeowner to protect me and to serve
2 me and to keep my neighborhood a neighborhood.

3 MS. KNUDSON: Thank you, Ms. Kaiser. The
4 next slip is Mary Ann Brendel.

5 MS. BRENDEL: Good afternoon. I'm Mary
6 Ann Brendel. Jack and I reside at 311 Burns Lane. I hope
7 that I'm not going to be too simplistic, but I just need to
8 make you understand that I have personally no bias against
9 these college students. We moved to this town because of
10 the college students. I think they add a great deal to our
11 health and well-being. It's a lively community. But I
12 think we need to strike a reasonable balance.

13 I will say at the outset that we have been
14 renters when Jack was in law school. In fact, we rented one
15 of our rooms to another law student. We've also been
16 homeowners. We live in the corridor that is now being very
17 much jeopardized by an overpopulation of students. And
18 whereas in our neighborhood we welcome the proper use of
19 single-family dwellings as rental space for students, I
20 think we want to strike a happy balance.

21 I walk by 101 Chandler Court every morning
22 of my life. I think what Greg has done has really been
23 wonderful in terms of the aesthetics and the remodeling.
24 But I do think that the balance will be lost if we have nine
25 students living in a house that was designed for a single

1 family.

2 So I hope you'll support the fact that we
3 have been able in this town to hire professionals like
4 Carolyn Murphy who is doing a superb job in my opinion and
5 that we'll support the members of this Board who have been
6 selected because of their expertise and their ability to see
7 the total picture and because of their ability to see the
8 vision for Williamsburg as we who have been here almost 50
9 years envision it. And I would urge you to stay the course.
10 Thank you.

11 **MS. KNUDSON:** Thank you. Bill Dell.

12 **MR. DELL:** My name is Bill Dell and I live
13 at 322 Indian Springs, and I think it's important that the
14 people here in the audience as well as this Board understand
15 a little bit of the background. I know a little bit more
16 about this particular case than most simply because of my
17 job as the liaison between the neighborhood council and
18 Williamsbug City.

19 Back in October of 2002, Ms. Murphy, you
20 know, sent the letter talking about this particular property
21 would not be able to be used other than a single-family
22 residence. When Lone-G purchased the property in April of
23 2004, they were again notified before any renovations were
24 made that the same was the case.

25 The city was told by the new owner that

1 they had incontrovertible proof that the nonconformance
2 would apply. However, that proof up to that particular
3 point in time had not been provided to city and as I
4 understand still has not been provided to the city. And
5 unfortunately, I'm not privy to the entire package that's
6 been presented to the Board, but I haven't heard of anything
7 that is new that has been generated since the last meeting
8 when it was postponed.

9 In April of '05, one year after the owner
10 was told that this was not a nonconforming property, a
11 letter was sent to the individual which the individual
12 refused to accept because it was sent certified mail, return
13 receipt requested. And it was I believe through my request
14 and my asking of the city had they -- actually, what I did,
15 I called Carolyn and I asked her if the individual had
16 rebutted her letter that she had sent. And she says, well,
17 you know, I've been out of the office and I'll have to check
18 and just make sure that he even received that particular
19 letter.

20 Well, come to find out, he had refused it.
21 It had not been received. So that put the onus on the city
22 to send a special courier to deliver the letter to Lone-G or
23 Lone-G's representatives when they acknowledged it, so this
24 is the first time that they actually acknowledged the fact
25 that the city had sent the letter which of course

1 incorporated yet another month's delay in the process.

2 Then, of course, as you know, last month
3 the appeal was finally made to the Board and again it was
4 requested that the issue be tabled which incurred another
5 30-day delay or thereabouts. And as we stand today, from
6 the time that the property was purchased not to mention the
7 two years prior when it was discussed that that particular
8 piece of property was not to be anything other than a single
9 family, we have still no proof of nonconformance.

10 So I'm just a country boy from Arkansas,
11 and it would seem that, you know, in these areas where we
12 have no particular proof, i.e., a lease or otherwise, that I
13 would submit that it's quite possible they don't exist and
14 never have existed.

15 The other thing is that I would like to
16 say that, you know, according to the federal income tax
17 regulations, that anyone that is renting a piece of property
18 has to report that property or report the income from that
19 property on their federal income tax returns. So it would
20 seem to me one of the easiest ways to resolve this situation
21 would be for this Board to ask to see those income tax
22 reports that show that in fact those particular pieces of
23 property or those rooms were rented over those particular
24 periods of time.

25 So not withstanding all of that, I would

1 urge that this Board deny the appeal because in my mind, you
2 know, the questions of the legitimacy of our strategic plan,
3 of our comprehensive plan, of our Architectural Review
4 Board, of the city zoning is all contingent upon what you
5 members of the Board decide today. Because as one of the
6 previous speakers so beautifully stated, there are those of
7 us that have come to this city and we have bought property
8 in the inner city fully expecting that property to maintain
9 its value and not be invaded and have those neighborhoods
10 deteriorate by absentee landlords that come in and don't
11 take care of their property. It's an injustice and even
12 more importantly it's a direct violation of the city
13 ordinances. And I would urge you to please deny this
14 appeal.

15 And I will be the first to admit that the
16 property looks a thousand percent better today than it did
17 several months ago, but I also, as one who walks by that
18 property every day when I go out on my walks, I'll also
19 assure you that if you look at the property today, it looks
20 a lot worse than it did particularly with regards to the
21 landscaping than it did a month and a half ago. The lawn
22 is, although admittedly sodded, it is full of weeds and
23 there are puddles of water all through it. And I would
24 maintain that the property is going to continue to
25 deteriorate because the students aren't going to take care

1 of it unless some other arrangements are made. Again,
2 please deny this particular request.

3 MS. KNUDSON: Thank you.

4 MR. DELL: I regret it, but I have to
5 leave for another meeting, and I look forward to hearing
6 your resolution.

7 MS. KNUDSON: Victor Smith?

8 MR. SMITH: Thank you for the opportunity.
9 I'm Victor Smith. I live at 140 Chandler Court. I also
10 support Carolyn's efforts to keep neighborhoods
11 neighborhoods with people living in them rather than turning
12 them into dormitories.

13 I think that Mr. Tarley has misrepresented
14 the neighbors' intentions by the way he has used words and
15 cast shadows on our objections by creating issues that don't
16 really exist. Most of us do not have problems with the fact
17 that we have students, most of us don't object to having
18 reasonable rentals in neighborhoods, and most of us have
19 recognized that Mr. Andrews rented his home when he was
20 living in his home, owning his home and then renting it to
21 some other people, and that was not something we objected
22 to. There were condition issues and other things that we
23 had problems with, but not that.

24 So I think to run us around other kinds of
25 issues and talk legalism about things that have been made

1 into matters of law -- because laws are things that are
2 there to protect people. This is one of those areas where
3 laws have been written in order to serve a purpose. In our
4 case, I hope part of that purpose is to understand what a
5 neighborhood means and that it's not a rooming house or it's
6 not something else. And whether you have somebody defining
7 it because somebody's language changed or maybe perhaps
8 inadvertently left out something and then have somebody make
9 a wonderful statement of why we messed up on words to be
10 able to stuff nine people into a single-family dwelling I
11 think is atrocious and violates the spirit of neighborhoods
12 and the community and whatever.

13 And so anything that you all as city
14 fathers and mothers can do and your people who we elect to
15 help protect us as our neighbor has said, I hope you do
16 that. I don't see this house as having -- you know, maybe
17 I'm wrong, students, but are you a family unit? Do you
18 consider yourselves a family unit? I think perhaps your
19 parents might be interested if you -- if they were reporting
20 that you were all living together as a family unit.

21 I understand why the rules may have
22 changed because we have issues of gay people living together
23 as in fact a family unit or whatever, and that is a
24 theological thing I don't want to get into, but I don't
25 think that renting to three students constitutes a family

unit. And then who is renting what house to what. And then all of a sudden, all we have is packing Volkswagens in my era. That's not something you want to drive down the street every day. The fact that you can do it is one issue. The fact that it's right to do it and drive around and use that as the new definition for what a Volkswagen car is is a whole different thing. And I think that's part of the problem.

I would like to invite anybody here who happens to be a neighbor, if I may, to for the record at least show whether they are here in opposition to having nine people, not whether it is a rental and not whether it is conforming or nonconforming which is the technical issue that you-all are going to worry about, but whether we as a neighborhood have a problem with nine nonrelated individuals in one building.

(Audience members indicated.)

MR. SMITH: Do you want a count of this? Okay. May the record show that almost everybody except for the people that are parties in this thing don't like this. And I think one of the reasons that we have hearings for these purposes is so that the neighbors can express their opinions and hopefully be listened to by the city that's trying to take care of them. (Indicated.) Thank you very much.

1 **MR. KAFES:** May I say something? I
2 believe Mr. Smith commented to the effect that we were
3 elected officials?

4 **MR. SMITH:** Not you, but the city.

5 **MR. KAFES:** I just want to make it clear,
6 we are not, we are not elected officials. We serve without
7 compensation.

8 **MR. SMITH:** You are part of an electoral
9 process that is designed with ancillary functions such as
10 yourselves to be able to take care of business in the city
11 and make rules that enhance and whatever it is. You can
12 fiddle with the language.

13 **MS. KNUDSON:** John Owens.

14 **MR. OWENS:** Madam Chair, I've already
15 written you and I spoke last time, so I will not repeat
16 myself. I will say without regard to the issue of continued
17 occupancy of all three units, it will come as a surprise and
18 did come as a surprise to those of who us who have lived in
19 Chandler Court to learn that such was the case.

20 Now, I do hope that the Board will review
21 very, very carefully whatever evidence exists for that
22 continued occupancy and I hope, too, that it will consider
23 the suggestion that Mr. Dell made with regard to federal
24 income tax records. Having been a property owner and a
25 property renter myself, my taxes also contain appreciation

1 scales for the properties in question which provide a very
2 useful index to the issue of continued occupancy.

3 So without attempting to tell the Board
4 its business, I will say and I'm sure that I can speak for
5 my neighbors, I know that I speak for my neighbors in
6 expressing our confidence that you will decide this matter
7 on the basis of the law, we can't ask for more than that,
8 the letter of the law and most certainly the spirit of the
9 law as we know it today. Thanks.

10 **MS. KNUDSON:** Gary Shelly.

11 **MR. SHELLY:** I am Gary Shelly. I live at
12 205 Indian Springs. I own the house at 100 Chandler Court
13 which is directly across the street from 101. I have quite
14 a few things to say. Our home at 100 Chandler Court is the
15 one most impacted by 101 Chandler Court.

16 Before I get too much further, I would
17 like say that nobody likes to be caught in the middle of
18 disputes like this, and I have friends on both sides. We
19 lived in the house on Chandler Court in 1997 through the
20 middle of 1993, and we were friends with everybody, liked
21 them, respected them, and continue to do so to this day.

22 I've learned, however, first about the
23 house being a three rental unit -- a three-dwelling unit
24 back in the early '90s. I own a house on Madison Road in
25 James City County, and one of the residents that used to

1 live at 101 Chandler Court moved out of that place and moved
2 into my house. And at that time, I learned that it had,
3 according to her, two others. As a resident at 100 Chandler
4 Court, I, on quite a few occasions, was requesting and have
5 requested the tenants living particularly in the back
6 apartment to do minor repairs (inaudible) a toilet, a fuse
7 box, or one time I had to go to her house to clear a drain.
8 But the apartment in back was seemingly mostly occupied.

9 Now, my relationship with Dave as a
10 neighbor was quite good. Dave was friendly to me. He kept
11 to himself. And, indeed, I never once set foot inside of
12 his particular unit. Nonetheless, we were on very friendly
13 terms as we are today in spite of the differences we had,
14 differences over the students.

15 Some of you may know I've been quite
16 active with students in the past couple of years in
17 particular in trying to get them to get involved in their
18 process here, and it's important that we think about what
19 Dick had to say about how we have our system set up here
20 with a system in place and ancillary functions. And you-all
21 are to be commended and have our appreciation for taking
22 your time to (inaudible).

23 The fact of the matter remains that
24 students are not allowed to sit on this Board, are not
25 allowed to be members of city council. And it's so

1 important. We also, while we appreciate what you do for our
2 town, without them, we wouldn't have the town we have. And
3 we can go on and on and list the wonderful things they
4 provide to us, and yet we don't turn around and give them
5 the consideration and the respect they deserve. And they
6 cannot get it for themselves because don't have the right to
7 vote. So they depend upon people like you-all to look out
8 for their best interest.

9 And we have nine students who are many of
10 desperate, desperate large numbers over at the college
11 looking for places downtown within walking distance who
12 would just love to have that house to live in. And while
13 the quality may not appeal to how some of us may like to
14 live our lives, it is nonetheless their domain right by the
15 college.

16 I feel very fortunate living with Bill
17 Dell on the street that I do with my new family. And we're
18 not overwhelmed perhaps is the word that some people like to
19 say with college students. But should that occurrence ever
20 happen, we will be prepared to deal with it because they
21 have the right to be here in my estimation.

22 Living in Chandler Court was a fine
23 experience. And as I said, we had good relations with
24 everybody. No one likes to be caught in the middle. On
25 Chandler Court, we had our internal problems and we pretty

1 much tried to keep them to ourselves, but not always. Once
2 upon a time maybe four or five years ago, I received a very
3 strongly written word from Channing Hall who was
4 representing another owner, and it had to do with a problem
5 up the street. And so be it, neighbors have problems. It
6 happens. These neighbors as I see today I believe -- I'm
7 not exactly sure who the principals were in it, in this
8 problem, but I believe also if given time, it's able to be
9 worked out.

10 Regarding 101 Chandler Court, we've all
11 said before and we've all noticed, I will commend
12 Mr. Granger on the wonderful job he's done. (Inaudible.)
13 This came from The Virginia Gazette, the front page of The
14 Virginia Gazette in 1995 talking about the house. Certainly
15 as I lived in Chandler Court, it was a main issue to have
16 the house cleaned up for a lot of the residents.

17 But I would like to say as the owner of
18 the house, and my wife agrees with me, that is most
19 impacted -- one more thing I would like to say before I -- I
20 was about to say that we support the efforts of Mr. Granger.
21 We certainly approve of how he's handled the house. We
22 would hope that the people -- we would like to try to work
23 this thing out. I don't know specifically all the problems,
24 but parking is a major issue. And we haven't really given
25 Mr. Granger a chance to work on that. These things happen.

1 Anything we've asked of him so far, he has done. And as far
2 as I can tell, he's running a fairly tight ship, very tight
3 ship over there, and I think we're all pleased with how the
4 neighborhood looks when we drive by his house.

5 I would like to say, too, although I'm not
6 living across from it now, when we first moved into Chandler
7 Court, the house next door that is now occupied by our very,
8 very good friends, the Quarles, was a house not dissimilar
9 to the situation that is at 101 now.

10 From a personal standpoint, while we very
11 much enjoy our friendship with the Quarles, I also
12 personally had no problem living with the students right
13 next to me. Sure, our car was boxed in sometimes. And
14 sure, there may have been some more noise than the Quarles
15 made, but that's part of the price you pay and the many
16 wonderful things you get in return. Thank you very much.

17 MS. KNUDSON: That's all the slips I have.
18 Is there anyone else that would like to speak?

19 MR. GODDIN: Hi, my name is Stewart
20 Goddin. I'm at 715 Goodwin Street here in the city. Just a
21 couple of real quick comments. I'm not a lawyer, but as I
22 understood the argument made by Lone-G's lawyer was that if
23 a property has any legal nonconforming use, that
24 automatically means that they can do anything else which is
25 not conforming. So if there's a B and B in town which has

1 six units legally because it's nonconforming but it had them
2 before they changed the law to four, they can now go to
3 twelve because they had six. And it was legally
4 nonconforming at one time -- I mean, it's legally allowed
5 for what they had, but if you have anything that's legal now
6 as nonconforming, that you automatically can do anything
7 else you want. And this seems to be how we're making the
8 jump from a single-family home to a triplex. And why not a
9 four-unit apartment in there? Why not six apartments in
10 there?

11 UNIDENTIFIED AUDIENCE MEMBER: It doesn't
12 have a full basement.

13 MR. GODDIN: So there is a limit there.
14 And the other thing which -- you know, I also admire the
15 house at 101 Chandler Court which looks better, but that's
16 not the issue here at all. I mean, I don't think we want to
17 get into a situation as a city that if someone comes in and
18 spends lots of money, cleans the place up and now says,
19 well, let's don't have a single-family home, let's make it a
20 townhouse or let's make it a condo, let's make it an
21 apartment building because I cleaned it up and put a lot of
22 money in it. That was my only comments. Thank you.

23 MS. KNUDSON: Thank you. Yes, sir?

24 MR. GEARY: My name is Bill Geary. I'm at
25 601 Wythe Lane. I will join the parade of people

1 complimenting Mr. Granger on the marvelous house transition
2 on the property. We on Chandler Court have been very keen
3 on playing by the rules, and I see this basically as an
4 issue of what are the rules and are our people playing by
5 the rules. And zoning is so important to our town, and the
6 precedent is so important. And I confess, I'm very confused
7 about the presentation this afternoon because I'm not sure
8 what the issues are.

9 For example, Mr. Andrews sold the property
10 into different forms of ownership. Does that mean then that
11 he wasn't in fact the person who owned the property
12 continuously? Did he become a tenant in the property as a
13 result of those transfers? I'm certainly not a legal -- I'm
14 not a lawyer. I'm not prepared to assess the legal issues.
15 And then the corroboration of Mr. Andrews' contentions about
16 renting the property and supplying tax returns seems to be
17 part of a good case.

18 But I think mainly it's about playing by
19 the rules. So we have a house that's owned by a
20 superintendent of schools and rented out, and he knows that
21 if he puts four students in there, that he's going to hear
22 from all the neighbors because right now the rule is three.
23 Maybe the rule should be seven. You know, I don't know that
24 it's about liking students or not liking students or wanting
25 them. Of course we want them or we wouldn't be there. We

1 wouldn't be in this town. We wouldn't be on Chandler Court.
2 But it's about what the rules are.

3 So when I heard the presentation today, I
4 thought I heard that it was one house which would mean that
5 there would be one family who would have roomers. And so
6 that really the argument is about head count. And I heard
7 Mr. Tarley say you could say yes to this and no to that.
8 And so he was making some important distinctions about what
9 the real issue is. Is the issue that those three apartments
10 are grandfathered because you can trace the history of each
11 one and that this in fact a three-apartment dwelling and
12 that it's always been a three-apartment dwelling, or is it
13 instead that it's somebody's house and that somebody has
14 sold it into different organizations and bought it back and
15 forth but it's somebody's house and that person as I, as an
16 owner, would like to have students in my house?

17 So is it about it's somebody's house and
18 that somebody could be three people and then they could rent
19 rooms to -- they could rent two rooms and they could rent to
20 two other people and we get the number seven? Now, it seems
21 to me whatever -- the discussion I heard from Mr. Tarley had
22 nothing to do with what I thought the issue was which I
23 heard you speak to earlier which is are we looking at a
24 three flat? Do we have on Chandler Court a building that
25 has been maintained continuously as a three flat? It may

1 look to everybody like a house. If we do, then I accept the
2 fact that it should have nine people in it because that's
3 the way the rules are.

4 So my sense is that there are some really
5 critical legal issues. It doesn't matter what I like or
6 what I don't like. Obviously it affects me as a property
7 owner on Chandler Court. If everybody is packing their
8 house with nine students, then I want to say, okay, I will
9 be a fraternity too. So the rules are really important, and
10 I would respect your experience and certainly all the work
11 that it will take to ascertain whether or not the case has
12 been made that we have a three flat here. Thank you.

13 **MS. KNUDSON:** Thank you, Mr. Geary. Is
14 there anyone else? Yes, sir?

15 **MR. BARSHIS:** My name is Darr Barshis. I
16 live at 17 Forest Hill Drive. And I wasn't planning on
17 speaking here today, but certainly all of us who moved to
18 this town and especially those on Jamestown Road and
19 Richmond Road noticed those large buildings across the
20 street. They comprise the College of William and Mary.

21 Many of the properties in this town are
22 nonconforming use properties and were built specifically for
23 rental to students, to those college students. I own some
24 of those properties. These nonconforming use properties are
25 purchased by investors to rent to tenants. That is not

1 going to change unless the planning commission makes changes
2 to our zoning ordinances. There is no surprise to the
3 neighbors here that this property has been used for tenant
4 occupants over decades, no surprise at all.

5 The rules that you-all have to decide on
6 are clear. I believe Mr. Tarley has laid out very clearly
7 and provided evidence that this residence was a legally
8 conforming use prior to a zoning change and that made it a
9 legally nonconforming use property.

10 Lastly, I would just like to say that
11 tenants are not terrorists, nor are students. Oftentimes,
12 this is the first time -- a student, when a student moves
13 into a rental property in the neighborhood, it's their first
14 time in a neighborhood. Neighbors help neighbors become
15 good neighbors. All too often I believe people come to
16 government bodies like this saying change the rules and get
17 these tenants out of our neighborhood for us. That's not
18 your job here today. Your job is to stick by the rules.
19 Thank you.

20 **MS. KNUDSON:** Is there anyone else that
21 would like to speak? Yes, sir?

22 **MR. THOMPSON:** Good afternoon. My name is
23 Alex Thompson, and I'm one of the three members on the
24 lease. I consider Williamsburg my home. This is my first
25 legal residence, and I have changed where I'm a registered

1 voter. I'm a registered voter in the city of Williamsburg.
2 And I invite anyone on Chandler Court or anyone who happens
3 to walk by the house to stop and talk to us. You know, like
4 the previous gentleman just said, we're not terrorists.

5 Yes, this is our first time kind of being
6 out in the world. And certainly as everyone has said, the
7 property looks remarkably better than it was. And I invite
8 anyone to come in as well. The inside of the house is
9 fantastic. We all love living there.

10 And the issue has been raised whether or
11 not we are viewed as a family. And I would say that, yes,
12 we are. We're certainly not your traditional family. We're
13 not related. But this is primarily occupied by members of
14 the William and Mary sailing team. We practice together.
15 We live together. We eat together. Everything we do
16 revolves around one another. And we -- among other things,
17 where we sail out of, First Colony, we put on a sailing
18 program over the summer. We have barbecues with their
19 residents. We like to be part of the community. And that
20 is said for every student in William and Mary. We like to
21 go out in the community because this is our home as well.

22 And the issue has been raised whether or
23 not we're permanent residents. While it's true that we're
24 only here for four years, maybe a few more, we do live here
25 and we care about this city. And we do everything we can to

1 put something back to it. And so if anyone has any issues
2 with 101 Chandler Court, please come to us. We'll be happy
3 to take care of it.

4 People are talking about the number of
5 cars that we're trying to pack into a small space. Well,
6 Mr. Granger has made a parking lot for four cars. You can't
7 fit any more in there, and we keep a very rigid schedule so
8 that we only have those four. If there is any more, please
9 come to us, we'll get it moved.

10 Now, last year, we had a problem with our
11 parking lot being used as a temporary parking lot for people
12 who were visiting the college. We don't know who owns the
13 cars and oftentimes we wouldn't be able to catch them and
14 let them know that it's a private parking lot. But we would
15 do our best. We would leave notes and police the best we
16 could.

17 But my main point is that we are members
18 of the city of Williamsburg. I'm a registered voter, and I
19 care about the city. And I would like anyone to come to us
20 if they have any problems, and we'll do our best to make it
21 seem like this is a neighborhood and that we're all
22 neighbors. Thank you.

23 MS. KNUDSON: Thank you very much. Would
24 anyone else like to speak?

25 (No audible response.)

1 **MS. KNUDSON:** I'll close the public
2 hearing. I would like to mention for the record that all
3 five members of the Board visited the property this
4 afternoon and had a tour inside and outside. What are the
5 wishes of the Board? Ms. White or Mr. Kafes?

6 **MS. WHITE:** I will yield to the floor.

7 **MR. KAFES:** I'll have to say, I'm confused
8 on a number of levels. First of all, we were given some
9 documentary evidence at the meeting. Under our rules, they
10 should be received at least three days prior to the meeting,
11 so none of us have really had an adequate opportunity to
12 review them. That's one problem I have.

13 Also, with all due respect to Mr. Tarley,
14 I'm not sure I really followed his argument. And in order
15 for us to go forward, I wonder whether it might be
16 appropriate for the Board to defer making a decision until
17 such time as we've had an opportunity to study the material
18 that's been presented to us today. And also, I question
19 whether it would be appropriate to ask Mr. Tarley to spell
20 out his position in a further memorandum which will allow us
21 to study it. Based on what I've been given today, I'm
22 really lost to be honest with you. May I ask, you quoted
23 from some of the early ordinances. Was that -- where did
24 that come from?

25 **MS. WHITE:** It came out of the materials

1 that Ms. Murphy put in our packages for the August hearing.

2 MR. KNUDSON: Mr. Carr?

3 MR. CARR: Thank you. As Mr. Kafes said,
4 we were given this package of information this afternoon, so
5 while the speakers were talking, I was trying to listen to
6 them but also going through these leases. And just as an
7 observation, several of these leases are either unsigned or
8 have no automatic extensions. And so while at the top of
9 them they may say from -- I have one here, 7-92 to 5-95, the
10 date -- the expiration date of the lease is June 30th, I
11 think, '93. So my point in bringing this up, and I've dog
12 tagged several of them, and it looks like it's about seven
13 or them or so, I don't know if I could follow the trail of
14 this property being leased properly without any breaks.
15 And, again, some of the leases are not signed, and we don't
16 have these renewals. So I've just got some questions there,
17 okay, is one observation.

18 The other I will get into a little bit
19 later about how Ms. Murphy, what she shared with us in the
20 August 2nd hearing, her reasons for her letter, and I think
21 they're pretty much straightforward. But I do have concern
22 about these leases.

23 MS. KNUDSON: Ms. White?

24 MS. WHITE: And I'll just say that unless
25 you-all convince me otherwise, I'm prepared today to make a

1 decision. And, Mr. Kafes, your question about the fact that
2 we got all of these materials, I agree with you, under
3 normal circumstances, I would want to -- obviously as a
4 lawyer, I would want to dig into them and try to compare
5 them against the materials that we had previously.

6 However, I did put a question to
7 Mr. Tarley, and that was could he definitively tell this
8 Board that there has been no uninterrupted use of all three
9 units for the period of time, and he said he could not. And
10 then that's I believe where we got into -- or he got into
11 the discussion about if the use was nonconforming generally,
12 then it didn't matter about the other units. And I would
13 say that for the purpose of today's hearing which is to
14 determine whether the zoning administrator erred in issuing
15 her letter of April 26th concerning whether or not the three
16 units are nonconforming uses and her conclusion in that
17 letter, that obviously the burden of proof both under our
18 ordinance and as acknowledged by Mr. Tarley is on the
19 Applicant to show us that they have met that burden. And
20 nothing in Mr. Tarley's presentation today could tell us
21 definitively that there were no uninterrupted periods of
22 time for all three of those units.

23 We also don't know what happened between
24 1966 and 1984. And there is a question in my mind as to
25 whether his argument that that's irrelevant is truly

1 irrelevant since the property has been constructed since
2 1925 at least. So I am ready to make a decision, and I'll
3 go through my rationale if appropriate.

4 MS. KNUDSON: Mr. Lamson?

5 MR. LAMSON: I have several questions.
6 First, I know this is a very delicate issue in trying to
7 find some kind of consensus. I want to ask Carolyn and
8 Chris if the Applicant, based on the decision of this Board,
9 decided to file a variance that would perhaps meet some
10 community consensus where perhaps they were to file a
11 variance requesting the use of two units and six occupants
12 on the property and four cars, is that something the
13 Applicant could then do if the Board decided against this
14 appeal?

15 MS. WORKMAN: The Applicant can file for a
16 variance at any point in time that they choose for whatever
17 condition that they feel the variance is appropriate for,
18 something that is modifying the zoning ordinance. But the
19 standard that they have to meet in order for this Board to
20 grant a variance is essentially that they have lost all
21 economic value of the property, and if the Board doesn't
22 act, it's essentially a taking. And that is an incredibly
23 high standard for the Applicant to have to meet. Having
24 said that, the Applicant can certainly file for a variance.

25 MR. LAMSON: So that if I were to believe

1 that the property met a legal nonconforming use and yet I
2 did not want to set a precedent with this decision but
3 wanted to see perhaps a variance that would bring to the
4 table more of a consensus direction in the neighborhood and
5 was willing to support that, that is something that the
6 Applicant could do then, correct?

7 MS. WORKMAN: All right. I'm a little bit
8 confused because as I understood your question, you were
9 linking today's hearing with the request for a variance, and
10 they are two separate and distinct issues. The question on
11 the table today is did Carolyn err in her decision with
12 respect to the property in that there is no legal
13 nonconforming use insofar as this property has three units.
14 If you make a determination one way or the other on that
15 issue, it is not -- it doesn't have anything to do with a
16 subsequent request for a variance.

17 MR. LAMSON: All right. Let me restate my
18 question, and I apologize. If I believe that the Applicant
19 proved it was a legal nonconforming use today and yet the
20 appeal did not succeed, and in the sense of the community
21 spirit of building a consensus to meet some middle ground
22 and not to establish nine residents and three units there
23 for the history of that property but in fact reducing it in
24 a variance where it would become two units, for example,
25 with six occupants and four cars and limiting conditions on

1 that property, i.e, with a resale --

2 MR. KAFES: It's my understanding that a
3 variance is not available as to questions of use. That's
4 what he's talking about.

5 MS. WORKMAN: Right.

6 MS. WHITE: Well, the other option would
7 be to apply for rezoning of the property. And certainly any
8 number of options would have been available to the Applicant
9 at the time they purchased. They wrote to Ms. Murphy in
10 2002 but didn't close until 2004. Now, I'm not sure why
11 that delay, but typically you wouldn't close on a piece of
12 property unless you knew that you could use it for the
13 purposes intended.

14 MS. KNUDSON: I'd just like to say that I,
15 too, am opposed to a deferral at this point. I think this
16 matter has already been deferred once, and I don't really
17 think we ought to put it off anymore. I think the zoning
18 administrator has made a very cogent argument. I do not
19 think that the Applicant has made an especially cogent
20 argument in asking for a reversal of her decision. I just
21 thought I would say that. Would anyone care to make a
22 motion?

23 MS. WHITE: I would like to -- well, we're
24 going to have discussion after the motion?

25 MS. KNUDSON: Yes.

1 MS. WHITE: I would like to move to uphold
2 the decision of the zoning administrator.

3 MS. KNUDSON: Is there a second to that
4 motion?

5 MR. KAFES: Our rules require that there
6 be a statement of the reasons in an appeal. So your
7 resolution would need to include a statement.

8 MS. WHITE: I believe we had a form
9 resolution in our packet, and I would move that we adopt the
10 form resolution. Would you like me to go through and read
11 the specific reasons?

12 MR. CARR: It was not in the second
13 package. It must have come from the first package, but it
14 may be the second resolution.

15 MS. KNUDSON: Carolyn, can you help with
16 that?

17 MS. MURPHY: Yeah.

18 MS. WHITE: While this was part of the
19 publicly available package for the August hearings, since
20 some of these who weren't present might not have been privy
21 to that, there are some statements of findings in the
22 resolution that was in the packet. Let me make sure I'm
23 reading them correct.

24 "That as of 1966 and at all times
25 thereafter, the zoning laws of the city of Williamsburg

1 limited the use and occupancy of the subject property to
2 single-family dwelling purposes; that while prior to 1966,
3 the zoning laws of the city of Williamsburg did allow
4 two-family dwelling usage of the property, there is no
5 evidence that such property was used for anything other than
6 a single-family dwelling and that in 1966 when the property
7 was rezoned to limit its use to single-family dwelling
8 purposes, the property was being used and occupied as a
9 single-family dwelling; that the city's permit records from
10 1950 to present do not indicate any legal change in the use
11 of property from the single-family dwelling; that copies of
12 leases provided by the Appellant fail to establish that the
13 property was ever legally used and occupied as a two-family
14 dwelling while the city's zoning ordinance allowed such use;
15 that the Appellant bears the burden of proof to establish
16 valid nonconforming use status of the property. That the
17 Appellant has failed to show by a preponderance of the
18 evidence that the property enjoys a legal nonconforming use
19 status that would allow its use and occupancy for any
20 purpose other than the uses allowed in the city's RS-2
21 single-family dwelling district which uses do not include
22 multifamily dwellings." Those would be the reasons.

23 MS. KNUDSON: Is there a second to the
24 motion?

25 MR. KAFES: I'll second it.

1 MS. KNUDSON: Is there discussion?

2 MS. WHITE: I just want to go through --
3 there's been a lot of discussion in front of us today. My
4 rationale, what I think we're here for today, we're here on
5 the limited question of whether the zoning administrator
6 erred in her conclusion that the use of this property for
7 three residential dwelling units did not legally meet the
8 criteria as a nonconforming use under our zoning ordinance.

9 Now, this Board is a quasi-judicial body
10 which means that we're not elected. We're not supposed to
11 play politics. I know whichever way we go, some of you
12 would walk out today and say, ah, you know, it was
13 political. But our job is to try to apply the law to the
14 facts as best we can.

15 As I've stated earlier tonight, the
16 Applicant has the burden to bear to prove to this Board that
17 these units were used historically as nonconforming uses and
18 meet the legal criteria that's set forth in our ordinance.
19 Based on the evidence that's been submitted and the
20 presentation by Mr. Tarley, I have found that the evidence
21 is insufficient to establish a nonconforming use. The
22 current use does also not comply with the current ordinance.

23 The students here obviously are faced with
24 some real issues that are living in this particular
25 arrangement. And I feel for them, I really do. I was a

1 William and Mary undergrad student. I was a William and
2 Mary law student. I know what it's like to scrounge around
3 and look for places to live. I know that the Applicant has
4 in other instances supplied college housing, and I think
5 that's not a bad position to be in. I think it's a noble
6 position.

7 However, we have to apply the law, and we
8 have to play by the rules. The record reflects that the
9 Applicant was told in 2002 prior to the actual purchase of
10 this property that it could only be used as a single-family
11 dwelling, and there was no application to this Board for a
12 variance. There was no application to my knowledge to city
13 council for rezoning. The Applicant for whatever reasons
14 went ahead forward with the purchase in 2004.

15 We, as the Board of Zoning Appeals, can't
16 change the ordinance or the zoning that's applicable to this
17 particular property. The only body that can change that
18 ordinance is the city council. And in this particular case,
19 I find that the Applicant simply has not met its burden of
20 proof sufficient to justify this qualifying as a
21 nonconforming use.

22 MS. KNUDSON: Thank you. Mr. Carr?

23 MR. CARR: I share several of the
24 sentiments that Ms. White just expressed and feel that our
25 overturning the zoning administrator's decision a very high

1 standard, very high standard, and I don't think that
2 standard has been reached today.

3 I've got concerns about the leases. I've
4 already mentioned that several of them were not fully
5 executed and the maturity dates of many of them are of
6 question. Also, I don't think we have copies, I may be
7 wrong, but I don't think we have copies of the leases for
8 the current students in the property, so I don't know if --
9 you know, by technical standards, is it leased or not. So
10 it would be helpful to have had those leases perhaps.

11 But, again, I think the burden is so high
12 for the Applicant to show that the zoning administrator's
13 decision is wrong that I will support the motion.

14 MS. KNUDSON: Mr. Lamson?

15 MR. LAMSON: Well, and, again, I know it's
16 a very emotional issue, but I think when it comes down to
17 the literal sense of it, that I think the zoning
18 administrator did not err on the part of interpreting the
19 zoning requirement.

20 My greater concern which we unfortunately
21 have no jurisdiction over is the consensus in the community
22 and the building and how that takes place and whether that
23 takes place through a variance on this Board or with a
24 zoning change with the city council. And however that is
25 done procedurally, I think that is the direction that I

1 would encourage. But in light of that, I have to support
2 the zoning administrator.

3 MS. KNUDSON: Mr. Kafes?

4 MR. KAFES: I think Ms. White has stated
5 the whole situation extremely well, and I agree with what
6 she has said. My suggestion that we defer for another month
7 is really just an attempt to perhaps give the Applicant --
8 the Appellant every consideration, but I think we've already
9 done that really.

10 But I would also like to add that the fact
11 that there was evidence submitted by some of the people who
12 testified here with respect to these, Jennifer Quarles at
13 the August 2nd, a resident for the last five years stated
14 that she had not seen evidence of the kind of use that's now
15 being claimed for the property during that period, and
16 Victor Smith who also testified on August 2nd, a 17- or
17 18-year resident stated the same thing. So we also have
18 that evidence on the record as far as our consideration.

19 But there's been some suggestion that,
20 well, this has gone on for a long time and therefore that it
21 makes it legal. It doesn't make it legal at all. It's a
22 rule of law that there's no estoppel against the sovereign,
23 the sovereign in this case being the city. In other words,
24 the fact that the city may not have enforced the zoning code
25 does not preclude it from enforcing it at some later date.

1 It's also the case with respect to this
2 type of situation that it's very, very difficult sometimes
3 to enforce the zoning code. It's come to the question of
4 how many people are occupying the property. The zoning
5 administrator can't go around in the middle of the night
6 doing a bed check to find out how many people are in a
7 particular residence. So that's nothing that should be
8 considered by us and of course was not considered by us.

9 Finally, I would second what Ms. White
10 said with respect to the expertise of the zoning
11 administrator. An appeal of this type, an administrative
12 appeal, we can only overturn the decision of the
13 Administrator if we find there is manifest error and there
14 is no manifest error here. And also, we need to give due
15 deference to the expertise of the Administrator, and there
16 is no question in my mind of the expertise that's available
17 here from Carolyn Murphy. So for all of these reasons, I
18 second the motion and I support it.

19 MS. KNUDSON: Thank you. I, too, support
20 the motion for all the reasons that have been said. It's
21 getting late and we don't need to go into them. So is there
22 any further discussion?

23 (No audible response.)

24 MS. KNUDSON: Would you call the roll,
25 please?

1 MS. SCOTT: Mr. Kafes?

2 MR. KAFES: Aye

3 MS. SCOTT: Mr. Lamson?

4 MR. LAMSON: Aye.

5 MS. SCOTT: Mr. Carr?

6 MR. CARR: Aye.

7 MS. SCOTT: Ms. Knudson?

8 MS. KNUDSON: Aye?

9 MS. SCOTT: Ms. White?

10 MS. WHITE: Aye.

11 MS. KNUDSON: The motion is to uphold the
12 decision of the zoning administrator. Thank you.

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COMMONWEALTH OF VIRGINIA,
CITY OF WILLIAMSBURG, to-wit:

I, Brenda Lewis Caputo, CCR, do certify
that the foregoing pages are a true and accurate transcript
of the proceedings had at the time and place mentioned and
transcribed to the best of my ability.

This 3rd day of October, 2005.

COPY

Brenda Lewis Caputo, CCR
Court Reporter

My commission expires September 30, 2009.

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